Washington Attorney General Rob McKenna testifies to Congress about deceptive online marketing tactics

Local News

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OLYMPIA -- Washington State Attorney General Rob McKenna took a leading role in encouraging Congress to get tough on companies that engage in deceptive online sales tactics. McKenna was the only attorney general to testify in connection with Tuesday’s hearing by the U.S. Senate Committee on Commerce, Science and Transportation.

McKenna’s five-page statement describes how certain marketing methods have been purposefully used to deceive consumers into paying monthly membership fees for services they didn’t want.

“I cannot overstate the consumer injury that is occurring because of these marketing methods,” McKenna wrote. “Based on our office’s investigations, we estimate that well over $50 million has been deceptively obtained from Washington consumers over the course of the last four years by a relatively small handful of businesses conducting the type of marketing at issue in the Committee’s investigation.

“Our investigations have gathered an extraordinary amount of evidence showing that companies engaging in this form of marketing are aware that their marketing and billing practices are deceiving consumers,” he continued, “and that the vast majority of consumers enrolled in their membership programs never authorized the enrollment.”

McKenna’s concerns parallel those expressed by the committee in a new 35-page investigative report, "Aggressive Sales Tactics on the Internet and Their Impact on American Consumers.” The report charges that Web companies including Affinion, Vertrue and Webloyalty and their affiliates have earned more than $1.4 billion in the last decade by duping consumers.

McKenna proposed legislation last year to address Internet promotions and “free trials.” The legislation, which died in committee, would have required sellers using free-to-pay conversion offers to obtain a consumer’s express agreement before billing them for goods or a service. The bill would have required such companies to obtain payment information directly from the consumer, rather than from a third-party marketer. The AGO is drafting similar legislation for the upcoming legislative session.

Intelius, one of the companies contacted by the Senate committee, recently revealed in documents filed with the U.S. Securities and Exchange Commission that it is under investigation by the Washington Attorney General’s Office. Intelius has a partnership with Adaptive Marketing, a subsidiary of Vertrue.

While online companies are a primary troublemaker, McKenna said consumers have also been deceived through telemarketing and direct mail pitches and that current disclosures “aren’t sufficient to overcome the inherent potential for deception.”

McKenna and 14 other attorneys general reached a $14.5 million multistate settlement with Affinion, then known as Trilegiant, and Chase Bank in 2006. The companies were accused of mailing consumers checks. By cashing the check, a customer supposedly agreed to enroll in one of Trilegiant’s many programs.

Other cases brought by the Washington Attorney General’s Office include:

- A February 2009 settlement with AT&T Mobility. The company and its predecessor, Cingular Wireless, sold a program called Roadside Assistance to customers through the use of an initial free trial, followed by automatic billing. Consumers complained they didn’t authorize the charges.
- An April 2008 settlement with SubscriberBASE. The company allegedly misled consumers into believing that they would receive free high-definition televisions, digital cameras and laptops. To qualify, consumers first had to provide personal information that the defendants then leased to other online marketers.
- A June 2007 settlement with the promoters of Privasafe and SurfSafe products. Consumer Digital Services, JSE Direct and their subsidiaries allegedly claimed they would guard customers from “unscrupulous marketers.” Instead, the Attorney General’s Office alleged they sold the personal information of thousands of consumers while billing them for services they didn’t want. In all, 13,000 customers paid $14.95 a month on their phone bills for an Internet service to which they were enticed with a “free” item. Only 5 percent ever used the service, and just one consumer received his freebie.
- An April 2007 settlement with three California businesses: Digital Enterprises, doing business as Movieland.com; AccessMedia Networks and Innovative Networks. As part of signing up for a seemingly anonymous free trial for a movie download service, users were led to download software. After the trial ended, the program launched hourly pop-up video messages demanding payment. Consumers ultimately paid as much as $80 to stop the pop-ups.